LE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [illegible] 1959

No. 649 29

MACKEY, COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL., APPELLANTS

vs.

FRANCISCO MENDOZA-MARTINEZ

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED JANUARY 16, 1959

JURISDICTION NOTED MARCH 9, 1959

Supreme Court of the United States

OCTOBER TERM, 1958

No. 649

MACKEY, COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL., APPELLANTS

vs.

FRANCISCO MENDOZA-MARTINEZ

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INDEX

	Original	Print
Record from the United States District Court for the Southern District of California		
Judgment of the Supreme Court of the United States	1	1
Trial stipulation	2	2
Memorandum and order, Jertberg, J.	6	5
Findings of fact	17	14
Conclusions of law	18	15
Judgment	19	16
Notice of appeal to the Supreme Court of the United States	20	17
Clerk's certificate (omitted in printing)	23	18
Order noting probable jurisdiction	24	19

[fol. 1]

SUPREME COURT OF THE UNITED STATES

No. 54, October Term, 1957

FRANCISCO MENDOZA-MARTINEZ, PETITIONER

vs.

ARGYLE F. MACKEY, Commissioner of Immigration and Naturalization Service and WILLIAM P. ROGERS, Attorney General of the United States

JUDGMENT—April 7, 1958

On writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

This cause came on to be heard on the transcript of the record from the United States Court of Appeals for the Ninth Circuit, and was duly submitted.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said United States Court of Appeals, in this cause, be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of California for determination in light of Trop v. Dulles, Secretary of State, No. 70, October Term, 1957, decided March 31, 1958.

April 7, 1958

[SEAL]

A true copy JOHN T. FEY,

Test:

Clerk of the Supreme Court of the United States

Certified this Twelfth day of May, 1958

By R. J. Blanchard, Deputy

[fol. 2] (File Endorsement Omitted)

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

Civil No. 1314-ND

FRANCISCO MENDOZA-MARTINEZ, PLAINTIFF

v.

ARGYLE R. MACKEY, The Commissioner of Immigration and Naturalization, and WILLIAM P. ROGERS, Attorney General of the United States, DEFENDANTS

TRIAL STIPULATION—Filed July 7, 1958

The following admissions and agreements of fact were made by the parties and require no proof:

I.

The plaintiff, Francisco Mendoza-Martinez claims residence within the City of Delano, State of California, and within the jurisdiction of this Court.

II.

The defendant, William P. Rogers, is the duly appointed, qualified and acting Attorney General of the United States, and as such is the head of the Department of Justice.

III.

Plaintiff was born in the United States on March 3, 1922, and thus was a citizen of the United States at birth.

[fol. 3]

IV.

Under the laws of Mexico plaintiff is now, and ever since his birth has been, a citizen and national of the Republic of Mexico.

V.

During 1942 plaintiff departed from the United States and went to Mexico for the sole purpose of evading and avoiding training and service in the Armed Forces of the United States.

VI.

Plaintiff remained in Mexico continuously from sometime during 1942 until on or about November 1, 1946 for the sole purpose of evading and avoiding training and service in the Armed Forces of the United States.

VII.

On June 23, 1947, plaintiff upon his plea of guilty was convicted in the United States District Court for the Southern District of California for violation of Section 11 of the Selective Service and Training Act of 1940. He was sentenced to imprisonment for a period of one year and one day.

VIII.

On February 3, 1953 a warrant of arrest in deportation proceedings was served upon the plaintiff. Pursuant to this warrant, a deportation hearing was held on May 25, 1953; and on September 11, 1953, the Special Inquiry Officer, who presided at the hearing rendered his decision, ordering that plaintiff be deported from the United States as an alien.

IX.

Plaintiff appealed the decision of the Special Inquiry Officer to the Board of Immigration Appeals, Department of Justice, and on October 23, 1953, said Board dismissed plaintiff's appeal.

[fol. 4]

X.

The cause herein is submitted to the Court for decision upon the above admissions and agreements, all the records and files herein and all evidence heretofore received.

ISSUES OF FACT TO BE TRIED

None

ISSUES OF LAW

I.

Is Section 401 (j) of the Nationality Act of 1940 unconstitutional, either on its face or as applied to the plaintiff?

The foregoing Trial Stipulation is hereby approved.
DATED: This 30th day of June, 1958.

DI GIORGIO AND DAVIS

By Thomas R. Davis
Attorneys for Plaintiff.
LAUGHLIN E. WATERS
United States Attorney
RICHARD A. LAVINE
Assistant U. S. Attorney
Chief of Civil Division

/s/ James R. Dooley
JAMES R. DOOLEY
Assistant U. S. Attorney
Attorneys for Defendants

The foregoing admissions of fact having been made by the parties, and issues of fact and law being thereupon stated and agreed to; the Court hereby approves the [fol. 5] foregoing Trial Stipulation which shall govern the course of the trial unless modified to prevent manifest injustice.

DATED: This 7th day of July, 1958.

/s/ Gilbert H. Jertberg
Judge, U. S. District Court

[fol. 6] (File Endorsement Omitted)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

Civil No. 1314-ND

FRANCISCO MENDOZA-MARTINEZ, PLAINTIFF

v.

ARGYLE R. MACKEY, The Commissioner of Immigration and Naturalization, and WILLIAM P. ROGERS, Attorney General of the United States, DEFENDANTS

MEMORANDUM AND ORDER—Sept. 24, 1958

On the 22nd day of September, 1955, this Court entered judgment in the above cause, which judgment adjudicated and decreed that the plaintiff lost his United States citizenship and nationality through expatriation by remaining outside the jurisdiction of the United States after September 27, 1944, in time of war and during a period declared by the President of the United States to be a period of national emergency, for the purpose of evading and avoiding training and service in the land and naval forces of the United States. This judgment was affirmed by the Court of Appeals for the Ninth Circuit on November 2, 1956. (238 Fed. 2d 239)

[fol. 7] On April 7, 1958, the Supreme Court of the United States vacated the judgment and remanded the cause "to the United States District Court for determination in light of *Trop* v. *Dulles*, ante, p. 86, decided March 31, 1958". (356 U.S. 258)

Pursuant to the order of the Supreme Court a hearing was held on July 10, 1958. The plaintiff was represented by DiGiorgio and Davis, Thomas R. Davis appearing, and the defendant was represented by Laughlin E. Waters, United States Attorney, James R. Dooley, Assistant United States Attorney, appearing.

At the original trial, the only issue presented to the Court for determination was the constitutionality of Section 401(j) of the Nationality Act of 1940 (54 Stat. 1137)

as amended, the parties having stipulated that the plaintiff, a citizen of the United States by birth, at the age of 20 and while subject to the Selective Service and Training Act, (Title 50 App. U.S.C.A. 312 et seq) in the year 1942 departed from the United States for the Republic of Mexico for the sole purpose of evading and avoiding training and service in the armed forces of the United States, and remaining in Mexico continuously from some time in 1942 until on or about November 1, 1946, for the sole purpose of evading and avoiding such training and service.

At the hearing held on July 10, 1958, the cause was submitted to the Court for determination on a trial stipulation of the parties containing the following provisions:

1. Plaintiff was born in the United States on March 3, 1922, and thus was a citizen of the United States by birth.

[fol. 8] 2. Under the law of Mexico, plaintiff, now and ever since his birth, has been a citizen and national of the Republic of Mexico.

3. During 1942 plaintiff departed from the United States and went to Mexico for the sole purpose of evading and avoiding training and service in the Armed Forces of the United States.

4. Plaintiff remained in Mexico continuously from sometime during 1942 until on or about November 1, 1946 for the sole purpose of evading and avoiding training and service in the Armed Forces of the United States.

5. On June 23, 1947, plaintiff upon his plea of guilty was convicted in the United States District Court for the Southern District of California for violation of Section 11 of the Selective Service and Training Act of 1940. He was sentenced to imprisonment for a period of one year and a day.

6. On February 3, 1953, a warrant of arrest in deportation proceedings was served upon the plaintiff. Pursuant to this warrant, a deportation hearing was held on May 25, 1953; and on September 11, 1953, the Special Inquiry Officer who presided at the hearing rendered his decision, ordering that plaintiff be deported from the United States as an alien.

7. Plaintiff appealed the decision of the Special In-

quiry Officer to the Board of Immigration Appeals, Department of Justice, and on October 23, 1953, said Board dismissed plaintiff's appeal.

8. Issues of fact to be tried: None.

9. Issues of law: Is Section 401(j) of the Nationality Act of 1940 unconstitutional, either on its face or as applied to the plaintiff?

[fol. 9] The trial stipulation provided that the cause would be submitted to the Court for decision on said stipulation and on all of the records, files and evidence theretofore received.

The proof in this cause is conclusive that the plaintiff, a citizen of the United States, departed from the United States for the Republic of Mexico for the sole purpose of evading and avoiding training and service in the armed forces of the United States, and remained in Mexico continuously from some time in 1942 until on or about 1946 for the sole purpose of evading and avoiding such training and service.

I have reconsidered this case in the light of *Trop* v. *Dulles*, 356 U.S. 86, as directed by the Supreme Court. The Trop case did not involve Section 401(j) of the Nationality Act of 1940, but involved Section 401(g) of that Act which provides that a citizen shall lose his nationality "by deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by a court martial and as a result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces; * *"

In the Trop case, the Chief Justice, in an opinion joined by Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Whittaker, concluded that even if citizenship could be divested in the exercise of some governmental power, Section 401(g) violates the Eighth Amendment because it is penal in nature and prescribes a "cruel and unusual punishment".

Mr. Justice Black in an opinion joined by Mr. Justice Douglas concurred in the opinion of the Chief Justice and expressed the view that even if citizenship could be involuntarily divested, the power to denationalize cannot be placed in the hands of military authorities.

[fol. 10] Mr. Justice Brennan concluded that it lies beyond the power of Congress to enact Section 401(g) because "the requisite rational relation between this statute and the war power does not appear * * *".

On the same day as the decision in the Trop case, the Supreme Court rendered its decision in *Perez* v. *Brownell.* (356 U.S. 44). In that case the petitioner, a national of the United States by birth, had been declared to have lost his American citizenship by operation of Section 401(e) and Section 401(j) of the Nationality Act of 1940 as amended. Section 401 of that Act provided that "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: * * * (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory. * * * * * (j) Departing from or remaining outside the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States."

Mr. Justice Frankfurter delivered the opinion of the Court which held Section 401(e) to be constitutional. In a closing paragraph of the opinion it is stated: "It cannot be said, then, that Congress acted without warrant when, pursuant to its power to regulate the relations of the United States with foreign countries, it provided that anyone who votes in a foreign election of significance politically in the life of another country shall lose his American citizenship. To deny the power of Congress to [fol. 11] enact the legislation challenged here would be to disregard the constitutional allocation of governmental functions that it is this Court's solemn duty to guard." (356 U.S. 62.)

In the closing paragraph of that opinion it is stated:

"Because of our view concerning the power of Congress with respect to Section 401(e) of the Nationality Act of 1940, we find it unnecessary to consider—indeed, it would be improper for us to adjudicate—the constitutionality of Section 401(j), and we expressly decline to rule on that important question at this time."

In his opinion in the Trop case, the Chief Justice stated: "Since a majority of the Court concluded in *Perez* v. *Brownell*, that citizenship may be divested in the exercise of some governmental power, I deem it appropriate to state additionally why the action taken in this case exceeds constitutional limits, even under the majority's decision in Perez. The Court concluded in *Perez* that citizenship could be divested in the exercise of the foreign affairs power. In this case, it is urged that the war power is adequate to support the divestment of citizenship. But there is a vital difference between the two statutes that purport to implement these powers by decreeing loss of citizenship. The statute in *Perez* decreed loss of citizenship—so the majority concluded—to eliminate those international problems that were thought to arise by reason of a citizen's having voted in a foreign election. The statute in this case, however, is entirely different. Section 401(g) decrees loss of citizenship for those found guilty of the crime of desertion. It is essentially like Section 401(j) of the Nationality Act, decreeing loss of citizenship for evading the draft by remaining outside the United States. This provision was also before the Court in *Perez*, but the majority declined to con-[fol. 12] sider its validity. While Section 401(j) decrees loss of citizenship without providing any semblance of procedural due process whereby the guilt of the draft evader may be determined before the sanction is imposed, Section 401(g), the provision in this case, accords the accused deserter at least the safeguards of an adjudication of guilt by a court-martial."

After studying the opinion rendered by the Supreme Court in the Trop and Perez cases, I have concluded that the law which must govern my re-consideration of the case under review is that Congress has the power to divest citizenship if a rational nexus exists between the content of a specific power in Congress and the action of Congress in carrying that power into execution, unless the action of Congress runs afoul of some provision of the Constitution, such, as in the Trop case, the Eighth Amendment.

It is my view that the only powers of Congress which need to be considered in the reconsideration of this case

are (1) the power to regulate foreign affairs which power is fully set forth in the Perez case, and (2) the war powers of Congress set forth in Article 1, Section 8, Clauses 1, 11, 12, 13, 14 and 18 of the Constitution of the United States.

It is the position of counsel for the defendant that Congress had the power to enact Section 401(j) under its powers to regulate foreign affairs and relied upon the Perez case in support of his position. In the Perez case the petitioner voted in a politically significant election while living in Mexico, which act was construed in the Perez case "as importing not only something less than complete and unswerving allegiance to the United States but also elements of an allegiance to another country in some measure, at least, inconsistent with American citizenship," [fol. 13] and as stated in the majority opinion in the Perez case, "makes the act potentially embarrassing to the American government and pregnant with the possibility of embroiling this country in disputes with other nations."

The petitioner's act in departing for Mexico for the purpose of evading training and service in the armed forces is to be condemned. It was an act for which he should have been and was punished. Such conduct, however, does not show a renunciation of his citizenship or an allegiance to a foreign power. While physically present in Mexico the petitioner committed no act which would import a dilution of his American citizenship or which might conceivably embarrass our government. So far as the record in this case shows, the conduct of the petitioner in Mexico was no different than the conduct of law-abiding American citizens who were lawfully in Mexico on visas or passports. It could not be contended that their physical presence in Mexico was a dilution of their American citizenship or that their presence there might be potentially embarrassing to the American government. I am unable to find any rational relationship between the power of Congress to regulate foreign affairs and the enactment by Congress of Section 401(j).

Under the so-called "war powers", Congress has the power to provide for the common defense; to declare war; to raise and support armies; to make rules for the gov-

ernment and regulation of the land and naval forces; and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

Is there a rational relationship between the powers above described and the enactment of Section 401(j)? Conceivably, Congress may have thought that making loss of citizenship a consequence of departing from the United States or remaining out of the United States in time of [fol. 14] war for the purpose of evading or avoiding training and service in the land and naval forces of the United States would deter citizens subject to such training and service from evading such service in such manner, and would thereby assist the authorities in raising the requisite manpower to successfully prosecute a war or provide for the common defense, or, conceivably, Congress may have thought that the morale of those who were subject to such service and training or those who had already been drafted into the service would be increased and thereby the efficiency of the armed forces might be improved.

Congress, however, enacted the Selective Service and Training Act of 1940, as amended, (50 App. U.S.C.A.). Section 311 thereof dealt with offenses and punishment under that Act. Said section provided, in substance, that any person who shall knowingly fail or neglect to perform any duty required by the Act or the rules and regulations made or directions given thereunder, or who shall otherwise evade registration and service in the land or naval forces, shall, upon conviction, be punished by imprisonment for not more than five years, or by a fine of not more than $10,000.00, or by both such fine and imprisonment. The penalty applies regardless of whether the violation is by departing from the United States or in some other manner. In the instant case, the plaintiff departed from the United States for the purpose of evading service in the land and naval forces of the United States. He committed a felony for which he was subject to trial and punishment. For such violation, the plaintiff was punished by incarceration for a period of one year and one day and also suffered the loss of rights which resulted from conviction of a felony. If the plaintiff had remained in the United States and had evaded

service under the Selective Service and Training Act, he would have committed the same offense and would have [fol. 15] suffered the penalty provided for such violation, but he would not have been subject to expatriation.

It is my conviction that the enactment of Section 311 accomplished all legitimate purposes that Congress could have reasonably considered in the enactment of Section 401(j), and that any relationship between the enactment of Section 401(j) and the war powers of Congress is extremely tenuous and ineffectively remote. I am unable to find that the enactment of Section 401(j) could be reasonably calculated to implement war powers possessed by Congress.

My views on Section 401(j) are similar to the views entertained by Mr. Justice Brennan on Section 401(g) in his concurring opinion in *Trop* v. *Dulles*. Mr. Justice Brennan stated in the last paragraph of that opinion as follows:

> "I therefore must conclude that Section 401(g) is beyond the power of Congress to enact. Admittedly, Congress' belief that expatriation of the deserter might further the war effort might find some—though necessarily slender—support in reason. But here, any substantial achievement, by this device, of Congress' legitimate purposes under the war power seems fairly remote. It is at the same time abundantly clear that these ends could more fully be achieved by alternative methods not open to these objections. In the light of these factors, and conceding all that I possibly can in favor of the enactment, I can only conclude that the requisite rational relationship between this statute and the war power does not appear—for in this relation the statute is not 'really calculated to effect any of the objects entrusted to the government * * *', McCulloch v. Maryland, 4 Wheat. 316, 423—and therefore that Section 401(g) falls beyond the domain of Congress."

For the reasons herein expressed, I hold that Section 401(j) is unconstitutional and therefore the plaintiff is entitled to the relief sought in his amended complaint.

[fol. 16] Counsel for the plaintiff is directed to prepare and lodge proposed findings of fact, conclusions of law and form of judgment consistent with the views herein expressed.

The Clerk of this Court is directed to forthwith mail copies of this memorandum to all counsel.

Dated: September 24th, 1958.

/s/ Gilbert H. Jertberg
Judge,
United States District Court

[fol. 17] (File Endorsement Omitted)

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

No. 1314-ND

FRANCISCO MENDOZA-MARTINEZ, PLAINTIFF

vs.

ARGYLE R. MACKEY, The Commissioner of Immigration and Naturalization, and WILLIAM P. ROGERS, Attorney General of the United States, DEFENDANTS

FINDINGS OF FACT, CONCLUSIONS OF LAW and JUDGMENT—October 20, 1958

FINDINGS OF FACT

1. Plaintiff was born in the United States on March 3, 1922, and thus was a citizen of the United States by birth.

2. Under the law of Mexico, plaintiff, now and ever since his birth, has been a citizen and national of the Republic of Mexico.

3. During 1942 plaintiff departed from the United States and went to Mexico for the sole purpose of evading and avoiding training and service in the Armed Forces of the United States.

4. Plaintiff remained in Mexico continuously from sometime during 1942 until on or about November 1, 1946, for the sole purpose of evading and avoiding training and service in the Armed Forces of the United States.

5. On June 23, 1947, plaintiff upon his plea of guilty was convicted in the United States District Court for the Southern District of California for violation of Section 11 of the Selective Service and Training Act of 1940. He was sentenced to imprisonment for a period of one year and a day.

[fol. 18] 6. On February 3, 1953, a warrant of arrest in deportation proceedings was served upon the plaintiff. Pursuant to this warrant, a deportation hearing was held on May 25, 1953; and on September 11, 1953, the Special Inquiry Officer who presided at the hearing rendered his decision, ordering that plaintiff be deported from the United States as an alien.

7. Plaintiff appealed the decision of the Special Inquiry Officer to the Board of Immigration Appeals, Department of Justice, and on October 23, 1953, said Board dismissed plaintiff's appeal.

8. On the 22nd day of September, 1955, this Court entered judgment in the above cause, which judgment adjudicated and decreed that the plaintiff lost his United States citizenship and nationality through expatriation by remaining outside the jurisdiction of the United States after September 27, 1944, in time of war and during a period declared by the President of the United States to be a period of national emergency, for the purpose of evading and avoiding training and service in the land and naval forces of the United States.

9. This judgment was affirmed by the Court of Appeals for the Ninth Circuit on November 2, 1956.

10. On April 7, 1958, the Supreme Court of the United States vacated the judgment and remanded the cause "to the United States District Court for determination in light of *Trop* v. *Dulles*, ante, p. 86, decided March 31, 1958."

Conclusions of Law

1. This Court has jurisdiction over the parties and over this cause.

2. Section 401j of the Nationality Act of 1940, a 1944 Amendment, under which defendant claims the plaintiff lost his United States citizenship, is unconstitutional.

3. Plaintiff should be declared to be a citizen of the United States.

4. Any and all prior orders or decrees by the Commissioner of Immigration and Naturalization, by the Board of Immigration Appeals, or by any other board or person whomsoever, declaring the plaintiff to be an alien and to have lost his United States citizenship, and any

such order or decree directing that plaintiff be deported from the United States, should be declared null and void [fol. 19] and of no further force or effect.

JUDGMENT

The above entitled cause having come on regularly for hearing on the 10th day of July, 1958, before the Hon. Gilbert H. Jertberg, Judge Presiding without a jury, the plaintiff being represented by his attorneys DiGiorgio and Davis, by Thomas R. Davis, and the defendants being represented by their attorneys, Laughlin E. Waters, United States Attorney, Richard A. Lavine, Assistant U. S. Attorney, and James R. Dooley, Assistant U. S. Attorney, by James R. Dooley; and the facts having been submitted by written stipulation and written memorandum having been submitted by defendants only, and oral argument having been heard; it is hereby

ORDERED, ADJUDGED AND DECREED that Section 401j of the Nationality Act of 1940, a 1944 Amendment, is unconstitutional; that plaintiff is a citizen of the United States; that any and all prior orders or decrees by the Commissioner of Immigration and Naturalization, by the Board of Immigration Appeals, or by any other board or person whomsoever, declaring the plaintiff to be an alien and to have lost his United States citizenship, and any order or decree directing that plaintiff be deported from the United States be, and the same hereby is, declared null and void and of no further force or effect.

DATED: This 20th day of October, 1958.

/s/ Gilbert H. Jertberg
Judge, U. S. District Court

[fol. 20] (File Endorsement Omitted)

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

No. 1314-ND

FRANCISCO MENDOZA-MARTINEZ, PLAINTIFF

v.

ARGYLE R. MACKEY, The Commissioner of Immigration and Naturalization, and WILLIAM P. ROGERS, Attorney General of the United States, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Nov. 17, 1958

I. Notice is hereby given that the above-named defendants appeal to the Supreme Court of the United States from the judgment of the District Court, entered October 21, 1958, declaring the plaintiff to be a citizen of the United States and prohibiting the deportation of the plainitff as an alien, on the ground that Section 401(j) of the Nationality Act of 1940, as amended, is unconstitutional.

This appeal is taken pursuant to 28 U.S.C. 1252.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Printed Transcript of Record as filed in the Court of Appeals for the Ninth Circuit in No. 14997, 1956 Term.

[fol. 21] 2. Opinion of the Court of Appeals for the Ninth Circuit dated November 2, 1956.

3. Mandate of the Supreme Court.

4. Stipulation submitted to the Court at the hearing held on July 10, 1958.

5. Memorandum and Order of the District Court dated September 24, 1958.

6. Findings of Fact, Conclusions of Law and Judgment, entered October 21, 1958.

7. This Notice of Appeal.

III. The following question is presented by this appeal:

A. Whether Congress had constitutional power to provide in Section 401(j) of the Nationality Act of 1940, as amended, that a United States national shall lose his United States nationality by departing from or remaining outside the jurisdiction of the United States in time of war or national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

LAUGHLIN E. WATERS
United States Attorney
RICHARD A. LAVINE
Assistant U. S. Attorney
Chief of Civil Division

/s/ James R. Dooley
JAMES R. DOOLEY
Assistant U. S. Attorney
Attorneys for Defendants.

[fol. 22] AFFIDAVIT OF SERVICE BY MAIL—
(Omitted in Printing)

[fol. 23] Clerk's Certificate—(Omitted in Printing)

[fol. 24] SUPREME COURT OF THE UNITED STATES

No. 649, October Term, 1958

• • • •

ORDER NOTING PROBABLE JURISDICTION—March 9, 1959

APPEAL from the United States District Court for the Southern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

March 9, 1959

☆ U. S. GOVERNMENT PRINTING OFFICE 1959 503313 1339